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February 20, 2020

Via ECF

Honorable Paul G. Gardephe
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

**Re: United States v. Avenatti, No. S1 19 Cr. 373 (PGG)
Letter Attaching Def. Exh. AA-3 (Unredacted and
Highlighted)**

Dear Judge Gardephe:

Attached to this letter are (1) Benjamin Homes's typewritten notes of the meeting of March 19, 2019, identified as Defense Exhibit AA-3 and (2) a highlighted / annotated version of the same exhibit.

During the testimony of government witness Benjamin Homes, Mr. Avenatti moved for the introduction of Def. Exh. AA-3, *in toto*. The Court declined to admit Def. Exh. AA-3 in evidence during the government's case-in-chief. Tr. 1461-66. Attachment 1 to this letter is Def. Exh. AA-3.

During the defense case, Mr. Avenatti moved for admission of those passages contained in Def. Exh. AA-3 of which Mr. Homes had no present recollection during trial, but which accurately reflected Mr. Homes's recollection at the time he memorialized his recollection in those same typewritten notes. The Court declined to admit those passages into evidence. Tr. 2086-89. Attachment 2 to this letter is an annotated / highlighted version of that same Def. Exh. AA-3; highlighted in yellow are the select passages described above, annotated by undersigned counsel (using Adobe Acrobat) to include an excerpt of and citation to Mr. Homes' testimony about the select passage.

As discussed with the Court, Mr. Avenatti is filing this letter and the attachments so that this defense exhibit is part of the record for appellate purposes.

Respectfully Submitted,



Scott A. Srebnick

Notes of March 19, 2019 Meeting with M. Avenatti and M. Geragos

Participants: Michael Avenatti, Mark Geragos, Rob Leinwand (Nike), Scott Wilson (BSF), Benjamin Homes (BSF)

Time: Approximately 12:00 p.m. EST.

These notes were drafted by Mr. Homes on 3/19/19 from handwritten notes that were taken contemporaneously with the meeting that the notes describe. These notes are not a verbatim transcript, but reflect Mr. Homes's best recollection of what was said at the time they were drafted. A copy of the handwritten notes from the meeting are attached as Exhibit A.

[Mr. Wilson began the conversation by talking about Mark Geragos's offices. Mr. Wilson also discussed BSF's acquisition of Caldwell Leslie in Los Angeles.]

[Mr. Wilson handed Mr. Geragos and Mr. Avenatti his business card.]

Mr. Geragos: Michael was telling me two weeks ago that he had something about Nike that he was going to go public with. I told him that I had worked with Nike before and that these were reasonable people. I contacted Casey Kaplan at Nike, who I had been in contact with about a different matter.

[Mr. Avenatti asked for the names and affiliation of Mr. Homes and Mr. Leinwand.]

Mr. Wilson: We agreed to take this meeting after Mark reached out, but we are still not sure why we are here.

Mr. Avenatti: Before we begin, can we agree that this conversation is covered by Rule 408 as a confidential settlement discussion, and that nothing discussed here will be admissible in any litigation.

Mr. Wilson: We agree that this meeting is covered by 408.

Mr. Avenatti: I will cut straight to the chase. Nike has a problem that makes the Adidas problem look small. I represent a whistleblower who has information that Nike directed the whistleblower to make payments to the number one pick in last year's draft.

Mr. Wilson: Who was the number one pick in last year's draft?

Mr. Avenatti: DeAndre Ayton.

I have information that this conduct reaches Nico Harrison. I am not sure, but it could even reach Lynn Merritt. I have emails, text messages, "bogus" invoices, and travel records that indicate Carlton DeBose and Jamal James were directing these payments.

I have information that Nike received a January 2017 subpoena from SDNY. I am going to guess that none of what I have was produced to the government under that subpoena. I do not know what the subpoena called for, but I am going to guess that all of what I have was covered by the subpoena, which could create a real problem for Nike.

I have reason to believe that Nike has known about this conduct, which could create a significant issue for Nike for failing to disclose these practices to the SEC. These payments were directed by Carlton DeBose who I believe was hired by Merl Code. I also believe that Jamal James may have been hired by Merl Code.

Nike is Nike; not Adidas. I am a fan of Nike. If I wasn't a fan of Nike, this would already be a national story.

I represent a whistleblower who is a former youth director of an EYBL team. Carlton [DeBose] and Jamal [James] squeezed him out of his contract. I believe he has a claim for breach of contract, tortious interference, and potentially other claims.

My client facilitated payments to players at the direction of Carlton [DeBose]. He was directed to pay \$10,000 to the mother of DeAndre Ayton. He was told to break the payment into two \$5,000 payments to avoid compliance issues. I also have information that Nike paid for the flight for my client to deliver the money to Andrea Ayton.

My client was also directed to make multiple payments to Bol Bol, Brandon McCoy, and others.

Mr. Wilson: Who were the other players your client was directed to make payments to?

Mr. Avenatti: I am not going to say at this point, but there were payments to others and all were directed by Nike through my client. I have text messages between my client and individuals at Nike.

I have the following demands:

- 1) First, my client's claim is settled and he agrees to "cooperate." We will include express language in the settlement agreement that will not prevent my client from giving any future testimony to the government. I'm sure you will agree that this will be in both of our client's interests.
- 2) Second, Nike agrees to conduct an internal investigation related to this conduct, which will be led by Mark Geragos and myself. We will discuss anything that we find with Nike, who can then decide whether we should disclose that information to SDNY.

Mr. Wilson: Can you disclose who your client is?

Mr. Avenatti: I am happy to disclose that information later if we appear to be making progress in our discussions.

Mr. Wilson: It is difficult to give advice to my client without knowing the identity of your client.

Mr. Avenatti: I am going to hold a press conference tomorrow and the identity of my client will not make a difference. I have Rebecca Ruiz at the New York Times on call and I am sure she will print the story with or without the identity of my client.

I have text messages from my client showing executives at Nike directing payments to DeAndre Ayton's mother.

Mr. Geragos: Wouldn't the identity of the individuals at Nike drive this story?

Mr. Wilson: There are dozens of people who run EYBL teams so it would be helpful to know the identity of your client.

Mr. Avenatti: I can show you a text from your client directing a payment to a program to pay a player.

Mr. Wilson: When you say that Nike has a SDNY subpoena—

Mr. Avenatti: Look, if you don't believe that anything happened—

It is possible that Carlton [DeBose] and Jamal [James] are rogue bad actors. But it is also possible that people at Nike turned a blind eye. What is not possible is that my client did this on his own. I have text messages, emails, and banking records which show payments going from Nike to Cal Supreme and then being siphoned off at the direction of Nike.

Mr. Wilson: Why have you not taken this information to the DOJ or the SEC?

Mr. Avenatti: I have not taken this information to the Government.

Mr. Wilson: You could be wearing a wire for all we know. [Laughter.]

[Mr. Avenatti opens his coat and shows the room that he is not wearing a wire.]

Mr. Wilson: Our client has three primary interests:

- 1) We have an interest in not being dragged through the press;
- 2) we have an interest in complying with the Government; and
- 3) we have an interest in conducting an internal investigation surrounding these allegations.

Mr. Geragos: I thought that Nike did the "right thing" in dealing with Colin Kaepernick. I don't know what the truth of all of this is, but I have seen documents implicating Nike and it is concerning. I don't know what the Nike reaction would be.

Mr. Wilson: Rob [Leinwand] is the number two guy in the legal department. We are not in a position to sign anything today, but you have Rob [Leinwand] here so we are taking these allegations seriously.

Adidas has somehow been able to avoid indictment even after one of their mid-level executives has been convicted.

Mr. Avenatti: My client is Gary Franklin.

Mr. Wilson: Director of Cal Supreme.

Mr. Leinwand: I would like to see the documents that you have.

[Mr. Avenatti asked Mr. Homes to stop taking notes, which Mr. Homes did. Mr. Wilson slid around the table so that he was sitting next to Mr. Avenatti and across from Mr. Homes and Mr. Leinwand. Mr. Geragos got up from the table. Mr. Avenatti then showed Mr. Wilson a number of documents that he had in his possession. Although Mr. Homes was sitting across the table and therefore could not see the documents perfectly, he could make out what some of the documents said or related to. Mr. Homes could also hear Mr. Avenatti and Mr. Wilson discussing the contents of the documents.

After Mr. Wilson finished reviewing the documents, Mr. Wilson, Mr. Leinwand, and Mr. Homes were taken to a different floor in the building so that they could discuss internally. The meeting was being held in a conference room on the fourth floor and Mr. Wilson, Mr. Leinwand, and Mr. Homes were taken to an empty room on the sixth floor.

Mr. Wilson began describing the documents he was shown by Mr. Avenatti. Mr. Homes resumed taking notes. Mr. Wilson said that there was a cover page before the actual documents, which appeared to be from a draft complaint or memo. Mr. Wilson said that Mr. Avenatti then showed Mr. Wilson the underlying documents, which appeared to be in the form of exhibits to the cover page.

Mr. Wilson said that he saw a text message between Gary Franklin and Carlton DeBose and a text message between Gary Franklin and Andrea Ayton. Mr. Wilson said that Mr. DeBose's phone number was partially redacted, but that he could see that the area code was 708.

Mr. Wilson said that he saw a communication from June 2016 referencing a payment to Brandon McCoy through Brandon McCoy's handler Shaun Manning.

Mr. Wilson said that he was shown bank records from Cal Supreme's Bank of America account, which showed monies coming in from Nike and monies going out to American All Star Basketball (Mr. McDonald's 501(c)(3)). Mr. Homes remembers Mr. Avenatti or Mr. Wilson commenting, at the time that Mr. Wilson was shown this document, that the payment from Cal Supreme to AASB was for \$28,000 and was in June 2016. Mr. Wilson later said that the \$28,000 payment to AASB could have been in 2017.

Mr. Wilson also said that he saw two withdraws of \$5,000 from Cal Supreme's Bank of America account. Mr. Wilson said that he saw communications between Gary Franklin and Carlton DeBose in which Mr. Franklin told Mr. DeBose that \$5,000 was the maximum amount he could withdraw.

Mr. Wilson said that he saw communications between Mr. Franklin and Mr. DeBose in which Mr. DeBose told Mr. Franklin to give money to Mr. McDonald.

Mr. Wilson said that he saw Cal Supreme invoices to Nike in June 2016 for \$60,000. Mr. Wilson said that he saw text messages from Mr. DeBose to Mr. Franklin in which Mr. DeBose told Mr. Franklin what description to provide on the Cal Supreme invoices.

Mr. Wilson said that he did not see any documents that explicitly said that Mr. DeBose directed Mr. Franklin to provide any money to a player.

Mr. Wilson said that he saw communications between Mr. Franklin and Mr. DeBose in which Mr. DeBose told Mr. Franklin to send someone you "trust" from your program to "PHX." Mr. Wilson said that he saw emails from Gabby Olivares booking flights for Mr. Franklin to travel to Phoenix.

Mr. Wilson said that he saw communications referencing a \$10,000 payment to DeAndre Ayton's mother.

Mr. Wilson said that he saw Cal Supreme invoices to Nike from April or June of 2017.

Mr. Wilson said that he saw communications that described Mr. McDonald as Bol Bol's handler.

Mr. Wilson said that he was shown bank records from Cal Supreme's Bank of America account which showed monies coming in from Nike and monies going out to American All Star Basketball in 2017. Mr. Homes remembers Mr. Wilson commenting, at the time he was shown this document, that the figure of this payment was an odd amount.

Mr. Wilson said that the cover sheet for the 2017 documents referenced a text from Jamal James, but that Mr. Wilson never saw the actual document.

Mr. Wilson, Mr. Leinwand, and Mr. Homes returned to the original conference room on the fourth floor.]

Mr. Leinwand: I appreciate hearing about this, but we need more time.

- 1) Hillary Krane is on vacation and I need to talk with her before we make any decisions. Nike is also a public company, so we will also need to meet with the board.
- 2) I get the claims, but we need to look at Nike's contract with Gary [Franklin] before we make any decisions. I also do not know what he is seeking. Do you have a number in mind?

Mr. Wilson: I think you alluded to a second client.

Mr. Avenatti: That client does not have a claim. That client is not important.

Mr. Wilson: I don't think you would have brought up that information if the second client was not important.

Mr. Avenatti: You asked me whether I had a second client. I did not lead with that information.

Mr. Wilson: Do you have a number?

Mr. Avenatti: This reminds me of a case that I was previously involved in regarding a class action complaint against Kimberly Clark. We had a mediation early on the case. Judge Lou Meisinger was the mediator. Prior to becoming a judge, Lou [Meisinger] was the general counsel to a little company called Disney.

At that meeting, we asked to settle the claim for \$31.5 million. [Lou] Meisinger believed that this was a reasonable offer and tried to convince the Kimberly Clark to accept the deal. [Lou] Meisinger told a story about when he was the general counsel at Disney and brought a settlement offer of \$50 million to the board. [Lou] Meisinger said that the board rejected the settlement offer, which ended up costing the company a great deal of money.

Ultimately, Kimberly Clark would not agree to pay the \$31.5 million. Twenty-nine months later, after the company paid \$51 million in legal fees to King & Spalding, we got a jury verdict against the company for \$400 million. That verdict has subsequently been reduced and is on appeal, but the total number is much larger than what they company could have settled for.

Tomorrow is a "unique" day for me:

- 1) It is the day before Nike's earnings report;
- 2) it is the day before the start of the NCAA tournament;
- 3) it is the day I am prepared to "blow this open."

I also understand that these decisions are not difficult to make.

[With respect to the following, Mr. Homes does not recall the specific words used and those words are not recorded in Mr. Homes's notes, but Mr. Homes does have a specific recollection that Mr. Avenatti made a statement about the size of Nike's market cap and insinuated that his press conference could have an effect on Nike's stock price.]

Mr. Wilson: We understand that the media threat is clear. And understand its immediate impact.

Mr. Geragos: I was going to suggest calling you back around 3:00 or 3:15 p.m.

Mr. Avenatti: I will cut to the chase. My demand is this:

- 1) I want \$1.5 million for Gary [Franklin]. This includes a full release both ways. Any agreement will include language that protects the company and will make clear that Nike is not buying Gary [Franklin]'s testimony.
- 2) Whatever the internal investigation costs, it costs. There is going to be a big "downstroke" and a "most favored nation's clause." If Nike brings in any other firms, the minimum amount of fees we are paid has to be two times the amount of fees paid to any other firms. We think we are well-situated to handle this investigation. Given my persona, I think the people involved in the investigation will be willing to talk to me. But it's not going to be cheap. We are not asking you to pay for nothing. We will share the findings of the investigation with whoever you want us to share it with.

Gary [Franklin] will never be able to have another Nike program again.

Mr. Wilson: What would Gary [Franklin] say to complement the documents?

Mr. Avenatti: He would say that he was directed to make multiple payments to players. And that he was threatened that he would lose his program if he refused to make these payments. He would say that he was told how to structure the invoices by Nike, and that he facilitated payments to DeAndre Ayton, Bol Bol, and Brandon McCoy.

Mr. Wilson: Do you exclusively represent Mr. Franklin.

Mr. Avenatti: Yes.

Mr. Wilson: We are here in good faith, but we are not going to be signing anything tomorrow. I also want to raise that disclosing this information could blow up the lives of the players involved. I have kids, I don't know if you have kids.

Mr. Avenatti: I don't give a shit. These players are not kids, they are adults who made a decision to take the money.

I agree that the system is broken, but the system is the system.

Mr. Wilson: It's not clear that all of the kids knew that they were being paid. Same goes for the college admissions scandal. It's not clear that all of the kids realized that they were being given extra help to get into college.

Mr. Avenatti: That's a fair point. But my biggest consideration with the delay is that you fuck Mark and me.

Mr. Wilson: Mark is pretty, but I don't want to fuck him.

Mr. Leinwand: The effect of doing a press release during the NCAA tournament is probably the same as doing a press release before the NCAA tournament. You have to realize this is a public company and nothing moves fast. I don't think that I can move before tomorrow.

Mr. Geragos: Let's have a call at 3:00 p.m.

Mr. Avenatti: There is nothing stopping you from calling the general counsel.

Mr. Leinwand: The general counsel is on vacation in Europe.

Mr. Avenatti: When was the last time you went on a vacation where you were not reachable by phone?

Mr. Leinwand: This is the general counsel of a public company. When I go on vacation I am reachable by phone, but that doesn't mean that she is. I also need to talk to the head of communications and the head of sports marketing. And they are going to say who the fuck is Gary Franklin and Jamal James and Carlton DeBose.

Mr. Avenatti: Why do you need to talk to the head of communications?

Mr. Leinwand: Because this is also a communications issue and the head of communications will need to assess our exposure.

Mr. Geragos: Who is the head of sports marketing?

Mr. Leinwand: John Slusher.

Mr. Geragos: We will text you around 3:30 p.m. We have to go to a meeting at the Eastern District [of New York] for an unrelated matter at 2:00 p.m. that I worked very hard to arrange. And I have a court appearance at 4:00 p.m.

Mr. Avenatti: Where will you be this afternoon? Will you be in Manhattan?

Mr. Wilson: Yes, we will be at our offices in Manhattan.

[The parties shook hands and concluded the meeting. The meeting ended at approximately 1:30 p.m. EST.]

#

Notes of March 19, 2019 Meeting with M. Avenatti and M. Geragos

Participants: Michael Avenatti, Mark Geragos, Rob Leinwand (Nike), Scott Wilson (BSF), Benjamin Homes (BSF)

Time: Approximately 12:00 p.m. EST.

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[Mr. Wilson began the conversation by talking about Mark Geragos's offices. Mr. Wilson also discussed BSF's acquisition of Caldwell Leslie in Los Angeles.]

[Mr. Wilson handed Mr. Geragos and Mr. Avenatti his business card.]

2 Mr. Geragos: Michael was telling me two weeks ago that he had something about Nike that he was going to go public with. I told him that I had worked with Nike before and that these were reasonable people. I contacted Casey Kaplan at Nike, who I had been in contact with about a different matter.



[Mr. Avenatti asked for the names and affiliation of Mr. Homes and Mr. Leinwand.]

Mr. Wilson: We agreed to take this meeting after Mark reached out, but we are still not sure why we are here.

4 Mr. Avenatti: Before we begin, can we agree that this conversation is covered by Rule 408 as a confidential settlement discussion, and that nothing discussed here will be admissible in any litigation.



Mr. Wilson: We agree that this meeting is covered by 408.

Mr. Avenatti: I will cut straight to the chase. Nike has a problem that makes the Adidas problem look small. I represent a whistleblower who has information that Nike directed the whistleblower to make payments to the number one pick in last year's draft.

Mr. Wilson: Who was the number one pick in last year's draft?

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I have information that this conduct reaches Nico Harrison. I am not sure, but it could even reach Lynn Merritt. I have emails, text messages, "bogus" invoices, and travel records that indicate Carlton DeBose and Jamal James were directing these payments.

Summary of Comments on AA3 Homes typed notes highlights-FOR FILING 2-13-20.pdf

Page: 1

 Number: 1 Author: Mike Lyon 2 Subject: Trial Stamp Date: 1/26/2020 6:12:23 PM

 Number: 2 Author: betsys Subject: Highlight Date: 2/9/2020 3:51:23 PM

 Number: 3 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:12:03 PM
2/6/20
PAGE 1455
LINE 5-10

5 THE WITNESS: If he's asking if Mr. Geragos conveyed
6 the purpose of the meeting, my answer is no. I don't know if
7 he commented on what the purpose of the meeting was.
8 Q. Now, after Mr. Geragos introduced the meeting, do you
9 recall Mr. Avenatti invoking Rule 408 of the Federal Rules of
10 Evidence?

 Number: 4 Author: betsys Subject: Highlight Date: 2/9/2020 3:51:47 PM

 Number: 5 Author: betsys Subject: Sticky Note Date: 2/9/2020 4:09:03 PM
PAGE 1513

5 Q. Do you remember that he continued and said as a
6 confidential settlement discussion?
7 A. I don't recall those specific --
8 Q. Look at your notes.
9 A. OK.
10 MR. RICHENTHAL: Your Honor, he's badgering the
11 witness.
12 THE COURT: Yes. Keep your voice down. There is no
13 reason to yell.
14 MR. H. SREBNICK: Forgive me.
15 THE COURT: No reason to yell.
16 BY MR. H. SREBNICK:
17 Q. I refer to your notes, sir.
18 Isn't it true Avenatti said it was a confidential
19 settlement discussion?
20 A. So, again, this is -- every time you've asked this line of
21 questioning, sitting here today I don't remember the specific

Comments from page 1 continued on next page

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Mr. Geragos: Michael was telling me two weeks ago that he had something about Nike that he was going to go public with. I told him that I had worked with Nike before and that these were reasonable people. I contacted Casey Kaplan at Nike, who I had been in contact with about a different matter.



[Mr. Avenatti asked for the names and affiliation of Mr. Homes and Mr. Leinwand.]

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Mr. Wilson: Who was the number one pick in last year's draft?

Mr. Avenatti: DeAndre Ayton.

I have information that this conduct reaches Nico Harrison. I am not sure, but it could even reach Lynn Merritt. I have emails, text messages, "bogus" invoices, and travel records that indicate Carlton DeBose and Jamal James were directing these payments.

22 words that were used throughout the meeting. I don't remember

23 that specific word. My notes say it. So, that was my best

24 memory at the time.

I have information that Nike received a January 2017 subpoena from SDNY. I am going to guess that none of what I have was produced to the government under that subpoena. I do not know what the subpoena called for, but I am going to guess that all of what I have was covered by the subpoena, which could create a real problem for Nike.

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My client was also directed to make multiple payments to Bol Bol, Brandon McCoy, and others.

Mr. Wilson: Who were the other players your client was directed to make payments to?

Mr. Avenatti: I am not going to say at this point, but there were payments to others and all were directed by Nike through my client. I have text messages between my client and individuals at Nike.

I have the following demands:

- 1) First, my client's claim is settled and he agrees to "cooperate." We will include express language in the settlement agreement that will not prevent my client from giving any future testimony to the government. I'm sure you will agree that this will be in both of our client's interests.
- 2) Second, Nike agrees to conduct an internal investigation related to this conduct¹ which will be led by Mark Geragos and myself. We will discuss anything that we find with Nike, who can then decide whether we should disclose that information to SDNY.



Mr. Wilson: Can you disclose who your client is?

Mr. Avenatti: I am happy to disclose that information later if we appear to be making progress in our discussions.

Page: 2

 Number: 1 Author: betsys Subject: Highlight Date: 2/9/2020 4:49:37 PM

 Number: 2 Author: betsys Subject: Sticky Note Date: 2/9/2020 4:50:41 PM
PAGE 1474

21 Q. Avenatti said, part two, it would be led by Avenatti and

22 Geragos, correct?

23 A. I understood it -- his demand is that Nike conduct an

24 internal investigation and hire him and Mr. Geragos to conduct

25 it.

Mr. Wilson: It is difficult to give advice to my client without knowing the identity of your client.

Mr. Avenatti: I am going to hold a press conference tomorrow and the identity of my client will not make a difference. I have Rebecca Ruiz at the New York Times on call and I am sure she will print the story with or without the identity of my client.

I have text messages from my client showing executives at Nike directing payments to DeAndre Ayton's mother.

Mr. Geragos: Wouldn't the identity of the individuals at Nike drive this story?

Mr. Wilson: There are dozens of people who run EYBL teams so it would be helpful to know the identity of your client.

Mr. Avenatti: I can show you a text from your client directing a payment to a program to pay a player.

Mr. Wilson: When you say that Nike has a SDNY subpoena—

Mr. Avenatti: Look, if you don't believe that anything happened—

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Mr. Wilson: Why have you not taken this information to the DOJ or the SEC?

Mr. Avenatti: I have not taken this information to the Government.

Mr. Wilson: You could be wearing a wire for all we know. [Laughter.]

[Mr. Avenatti opens his coat and shows the room that he is not wearing a wire.]

Mr. Wilson: Our client has three primary interests:

- 1) We have an interest in not being dragged through the press;
- 2) we have an interest in complying with the Government; and
- 1) we have an interest in conducting an internal investigation² surrounding these allegations.

4) Mr. Geragos: I thought that Nike did the "right thing" in dealing with Colin Kaepernick. I don't know what the truth of all of this is, but I have seen documents implicating Nike and it is concerning. I don't know what the Nike reaction would be.

Page: 3

 Number: 1 Author: betsys Subject: Highlight Date: 2/9/2020 3:26:30 PM

 Number: 2 Author: betsys Subject: Highlight Date: 2/9/2020 3:26:19 PM

 Number: 3 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:27:36 PM
PAGES 1478-79

19 A. I recall Mr. Wilson saying one of the interests was in
20 conducting an internal investigation.
21 Q. Do you recall that Wilson said "an internal investigation
22 surrounding these allegations"?
23 A. I don't recall the specific words.
24 Q. AA-3, page 3, four lines from the bottom.
25 (Pause)

1479

1 Mr. Homes, does that refresh your recollection?
2 A. I recall him saying, generally, that we were interested in
3 conducting an internal investigation. I see it in my memo, but
4 I don't have a memory of him saying those specific words.

 Number: 4 Author: betsys Subject: Highlight Date: 2/9/2020 3:30:15 PM

 Number: 5 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:30:05 PM
PAGE 1479

16 Q. Do you recall that right after that, Geragos describes how
17 Nike had done the right thing with regard to Geragos'
18 high-profile football client? Do you recall that?
19 A. I recall there being a discussion about -- a general
20 discussion about Geragos' negotiations with Nike, but I don't
21 recall "the right thing" being said.
22 Q. Take a look at AA-3, page 3, three lines from the bottom.
23 Do you recall Geragos specifically used the phrase,
24 "the right thing"?
25 A. No. But it's in my memo so that was my memory at the time.

Mr. Wilson: Rob [Leinwand] is the number two guy in the legal department. We are not in a position to sign anything today, but you have Rob [Leinwand] here so we are taking these allegations seriously.

Adidas has somehow been able to avoid indictment even after one of their mid-level executives has been convicted.

Mr. Avenatti: My client is Gary Franklin.

Mr. Wilson: Director of Cal Supreme.

Mr. Leinwand: I would like to see the documents that you have.

[Mr. Avenatti asked Mr. Homes to stop taking notes, which Mr. Homes did. Mr. Wilson slid around the table so that he was sitting next to Mr. Avenatti and across from Mr. Homes and Mr. Leinwand. Mr. Geragos got up from the table. Mr. Avenatti then showed Mr. Wilson a number of documents that he had in his possession. Although Mr. Homes was sitting across the table and therefore could not see the documents perfectly, he could make out what some of the documents said or related to. Mr. Homes could also hear Mr. Avenatti and Mr. Wilson discussing the contents of the documents.

After Mr. Wilson finished reviewing the documents, Mr. Wilson, Mr. Leinwand, and Mr. Homes were taken to a different floor in the building so that they could discuss internally. The meeting was being held in a conference room on the fourth floor and Mr. Wilson, Mr. Leinwand, and Mr. Homes were taken to an empty room on the sixth floor.

Mr. Wilson began describing the documents he was shown by Mr. Avenatti. Mr. Homes resumed taking notes. ¹Mr. Wilson said that there was a cover page before the actual documents, which appeared to be from a draft complaint or memo. Mr. Wilson said that Mr. Avenatti then showed Mr. Wilson the underlying documents, which appeared to be in the form of exhibits to the cover page.



Mr. Wilson said that he saw a text message between Gary Franklin and Carlton DeBose and a text message between Gary Franklin and Andrea Ayton. Mr. Wilson said that Mr. DeBose's phone number was partially redacted, but that he could see that the area code was 708.

³Mr. Wilson said that he saw a communication from June 2016 referencing a payment to Brandon McCoy through Brandon McCoy's handler Shaun Manning.



Mr. Wilson said that he was shown bank records from Cal Supreme's Bank of America account, which showed monies coming in from Nike and monies going out to American All Star Basketball (Mr. McDonald's 501(c)(3)). Mr. Homes remembers Mr. Avenatti or Mr. Wilson commenting, at the time that Mr. Wilson was shown this document, that the payment from Cal Supreme to AASB was for \$28,000 and was in June 2016. Mr. Wilson later said that the \$28,000 payment to AASB could have been in 2017.

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 Number: 1 Author: betsys Subject: Highlight Date: 2/9/2020 4:51:31 PM

 Number: 2 Author: betsys Subject: Sticky Note Date: 2/9/2020 4:52:38 PM
PAGE 1483

7 Q. Do you recall Mr. Wilson saying that he had seen a draft

8 complaint?

9 A. I don't recall that.

10 Q. AA-3, page 4, paragraph 8.

11 (Pause)

12 A. I recall Scott making some comment that the packet of

13 documents looked like they could have been from exhibits to

14 some draft complaint.

 Number: 3 Author: betsys Subject: Highlight Date: 2/9/2020 4:53:00 PM

 Number: 4 Author: betsys Subject: Sticky Note Date: 2/9/2020 4:55:25 PM
PAGE 1483-84

21 Q. Do you recall Mr. Wilson telling you he had seen a

22 communication from 2016 which appeared to Wilson to be a

23 payment to a basketball player, Brandon McCoy, through a

24 handler named Shaun Manning?

25 A. I'd have to look at my notes.

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1 Q. Paragraph 10, the same page.

2 (Pause)

3 A. I don't recall that specific statement, but it's in my

4 notes so that was my best memory at the time.

Mr. Wilson also said that he saw two withdraws of \$5,000 from Cal Supreme's Bank of America account. Mr. Wilson said that he saw communications between Gary Franklin and Carlton DeBose in which Mr. Franklin told Mr. DeBose that \$5,000 was the maximum amount he could withdraw.

Mr. Wilson said that he saw communications between Mr. Franklin and Mr. DeBose in which Mr. DeBose told Mr. Franklin to give money to Mr. McDonald.

¹ Mr. Wilson said that he saw Cal Supreme invoices to Nike in June 2016 for \$60,000. Mr. Wilson said that he saw text messages from Mr. DeBose to Mr. Franklin in which Mr. DeBose told Mr. Franklin what description to provide on the Cal Supreme invoices.



Mr. Wilson said that he did not see any documents that explicitly said that Mr. DeBose directed Mr. Franklin to provide any money to a player.

Mr. Wilson said that he saw communications between Mr. Franklin and Mr. DeBose in which Mr. DeBose told Mr. Franklin to send someone you "trust" from your program to "PHX." Mr. Wilson said that he saw emails from Gabby Olivares booking flights for Mr. Franklin to travel to Phoenix.

³ Mr. Wilson said that he saw communications referencing a \$10,000 payment to DeAndre Ayton's mother.



Mr. Wilson said that he saw Cal Supreme invoices to Nike from April or June of 2017.

⁵ Mr. Wilson said that he saw communications that described Mr. McDonald as Bol Bol's handler.



Mr. Wilson said that he was shown bank records from Cal Supreme's Bank of America account which showed monies coming in from Nike and monies going out to American All Star Basketball in 2017. Mr. Homes remembers Mr. Wilson commenting, at the time he was shown this document, that the figure of this payment was an odd amount.

Mr. Wilson said that the cover sheet for the 2017 documents referenced a text from Jamal James, but that Mr. Wilson never saw the actual document.

Mr. Wilson, Mr. Leinwand, and Mr. Homes returned to the original conference room on the fourth floor.]

Mr. Leinwand: I appreciate hearing about this, but we need more time.

- 1) Hillary Krane is on vacation and I need to talk with her before we make any decisions. Nike is also a public company, so we will also need to meet with the board.

- 2) I get the claims, but we need to look at Nike's contract with Gary [Franklin] before we make any decisions. I also do not know what he is seeking. Do you have a number in mind?



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 Number: 1 Author: betsys Subject: Highlight Date: 2/9/2020 3:31:40 PM

 Number: 2 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:32:51 PM
PAGE 1485

- 5 Q. Do you recall Mr. Wilson describing for you text messages
- 6 from DeBose, the Nike executive, to Franklin, the coach, in
- 7 which DeBose tells Franklin how to describe the services
- 8 rendered on a Cal Supreme invoice?
- 9 MR. RICHENTHAL: Objection to the word "executive."
- 10 THE COURT: Overruled.
- 11 A. I don't recall that specific statement, no.
- 12 Q. AA-3, page 5, paragraph 3.
- 13 (Pause)
- 14 A. I recall Mr. Wilson discussing the Cal Supreme invoices. I
- 15 do not recall him discussing the texts in which Carlton
- 16 directed Gary Franklin how to describe those invoices. But
- 17 it's in my memo, and, again, that's my best memory at the time.

 Number: 3 Author: betsys Subject: Highlight Date: 2/9/2020 4:55:38 PM

 Number: 4 Author: betsys Subject: Sticky Note Date: 2/9/2020 4:56:10 PM
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- 16 Q. Do you recall Mr. Wilson describing that he saw
- 17 communications referencing a \$10,000 payment to DeAndre Ayton's
- 18 mother?
- 19 A. I don't recall the specific amount, but I recall there
- 20 being communications discussing some payment to DeAndre Ayton's
- 21 mother.
- 22 Q. AA-3, page 5, paragraph 6.
- 23 (Pause)
- 24 A. Sitting here today, I can't remember this specific amount.
- 25 I remember that there were communications referencing a

 Number: 5 Author: betsys Subject: Highlight Date: 2/9/2020 3:37:22 PM

 Number: 6 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:39:17 PM
PAGE 1487

- 3 Q. Do you recall Mr. Wilson describing that he saw

Comments from page 5 continued on next page

Mr. Wilson also said that he saw two withdraws of \$5,000 from Cal Supreme's Bank of America account. Mr. Wilson said that he saw communications between Gary Franklin and Carlton DeBose in which Mr. Franklin told Mr. DeBose that \$5,000 was the maximum amount he could withdraw.

Mr. Wilson said that he saw communications between Mr. Franklin and Mr. DeBose in which Mr. DeBose told Mr. Franklin to give money to Mr. McDonald.

Mr. Wilson said that he saw Cal Supreme invoices to Nike in June 2016 for \$60,000. Mr. Wilson said that he saw text messages from Mr. DeBose to Mr. Franklin in which Mr. DeBose told Mr. Franklin what description to provide on the Cal Supreme invoices.



Mr. Wilson said that he did not see any documents that explicitly said that Mr. DeBose directed Mr. Franklin to provide any money to a player.

Mr. Wilson said that he saw communications between Mr. Franklin and Mr. DeBose in which Mr. DeBose told Mr. Franklin to send someone you "trust" from your program to "PHX." Mr. Wilson said that he saw emails from Gabby Olivares booking flights for Mr. Franklin to travel to Phoenix.

Mr. Wilson said that he saw communications referencing a \$10,000 payment to DeAndre Ayton's mother.



Mr. Wilson said that he saw Cal Supreme invoices to Nike from April or June of 2017.

Mr. Wilson said that he saw communications that described Mr. McDonald as Bol Bol's handler.



Mr. Wilson said that he was shown bank records from Cal Supreme's Bank of America account which showed monies coming in from Nike and monies going out to American All Star Basketball in 2017. Mr. Homes remembers Mr. Wilson commenting, at the time he was shown this document, that the figure of this payment was an odd amount.

Mr. Wilson said that the cover sheet for the 2017 documents referenced a text from Jamal James, but that Mr. Wilson never saw the actual document.

Mr. Wilson, Mr. Leinwand, and Mr. Homes returned to the original conference room on the fourth floor.]

Mr. Leinwand: I appreciate hearing about this, but we need more time.

- 1) Hillary Krane is on vacation and I need to talk with her before we make any decisions. Nike is also a public company, so we will also need to meet with the board.

8) I get the claims, but we need to look at Nike's contract with Gary [Franklin] before we make any decisions. I also do not know what he is seeking. Do you have a number in mind?



4 communications that describe Mr. McDonald as Bol Bol's handler?
5 A. I can't recall if the word "handler" was used. I recall
6 there being some documents describing McDonald's connection to
7 Bol Bol.
8 Q. AA-3, page 5, paragraph 8.
9 (Pause)
10 Does that refresh your recollection?
11 A. I can't remember today that he used the word "handler," but
12 it's in my notes and that was my best memory at the time.

 Number: 7 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:44:46 PM
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2 A. Rob said -- he acknowledged the claims that Mr. Avenatti
3 was saying and said we have to look at the contract.
4 Q. Leinwand said he needed to look at the contract before
5 making any decisions about resolving the claims, correct?
6 A. I don't recall that. I recall him saying I acknowledge the
7 claims but I need to look at the contract.
8 Q. He said I need to look at the contract before making any
9 decisions, correct?
10 A. I don't recall him saying those words. I recall him saying
11 I acknowledge the claims but I need to look at the contract.
12 Q. AA-3, page 5, last paragraph.
13 (Pause)
14 A. I don't recall him saying that.
15 Q. Did you record that statement, quote, I get the claims but
16 we need to look at Nike's contract with Gary before we make any
17 decisions?
18 A. Yes.

 Number: 8 Author: betsys Subject: Highlight Date: 2/9/2020 3:39:26 PM

Mr. Wilson: I think you alluded to a second client.

Mr. Avenatti: That client does not have a claim. That client is not important.

Mr. Wilson: I don't think you would have brought up that information if the second client was not important.

Mr. Avenatti: You asked me whether I had a second client. I did not lead with that information.

Mr. Wilson: Do you have a number?

Mr. Avenatti: This reminds me of a case that I was previously involved in regarding a class action complaint against Kimberly Clark. We had a mediation early on the case. Judge Lou Meisinger was the mediator. Prior to becoming a judge, Lou [Meisinger] was the general counsel to a little company called Disney.

At that meeting, we asked to settle the claim for \$31.5 million. [Lou] Meisinger believed that this was a reasonable offer and tried to convince the Kimberly Clark to accept the deal. [Lou] Meisinger told a story about when he was the general counsel at Disney and brought a settlement offer of \$50 million to the board. [Lou] Meisinger said that the board rejected the settlement offer, which ended up costing the company a great deal of money.

Ultimately, Kimberly Clark would not agree to pay the \$31.5 million. Twenty-nine months later, after the company paid \$51 million in legal fees to King & Spalding, we got a jury verdict against the company for \$400 million. That verdict has subsequently been reduced and is on appeal, but the total number is much larger than what they company could have settled for.

Tomorrow is a "unique" day for me:

- 1) It is the day before Nike's earnings report;
- 2) it is the day before the start of the NCAA tournament;
- 3) it is the day I am prepared to "blow this open."



I also understand that these decisions are not difficult to make.

[With respect to the following, Mr. Homes does not recall the specific words used and those words are not recorded in Mr. Homes's notes, but Mr. Homes does have a specific recollection that Mr. Avenatti made a statement about the size of Nike's market cap and insinuated that his press conference could have an effect on Nike's stock price.]

Mr. Wilson: We understand that the media threat is clear. And understand its immediate impact.


Mr. Geragos: I was going to suggest calling you back around 3:00 or 3:15 p.m.

Mr. Avenatti: I will cut to the chase. My demand is this:

- 1) I want \$1.5 million for Gary [Franklin]. This includes a full release both ways¹ Any agreement will include language that protects the company and will make clear that Nike is not buying Gary [Franklin]'s testimony. 
- 2) Whatever the internal investigation costs, it costs. There is going to be a big "downstroke" and a "most favored nation's clause." ³ Nike brings in any other firms, the minimum amount of fees we are paid has to be two times the amount of fees paid to any other firms. We think we are well-situated to handle this investigation. Given my persona, I think the people involved in the investigation will be willing to talk to me. But it's not going to be cheap. We are not asking you to pay for nothing. We will share the findings of the investigation with whoever you want us to share it with. 

Gary [Franklin] will never be able to have another Nike program again.

Mr. Wilson: What would Gary [Franklin] say to complement the documents?

Mr. Avenatti: He would say that he was directed to make multiple payments to players. And that he was threatened that he would lose his program if he refused to make these payments. He would say that he was told how to structure the invoices by Nike, and that he facilitated payments to DeAndre Ayton, Bol Bol, and Brandon McCoy. 

Mr. Wilson: Do you exclusively represent Mr. Franklin.

Mr. Avenatti: Yes.

Mr. Wilson: We are here in good faith, but we are not going to be signing anything tomorrow. I also want to raise that disclosing this information could blow up the lives of the players involved. I have kids, I don't know if you have kids.

Mr. Avenatti: I don't give a shit. These players are not kids, they are adults who made a decision to take the money.

I agree that the system is broken, but the system is the system.

Mr. Wilson: It's not clear that all of the kids knew that they were being paid. Same goes for the college admissions scandal. It's not clear that all of the kids realized that they were being given extra help to get into college.

Mr. Avenatti: That's a fair point. But my biggest consideration with the delay is that you fuck Mark and me.

Mr. Wilson: Mark is pretty, but I don't want to fuck him.

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 Number: 1 Author: betsys Subject: Highlight Date: 2/9/2020 3:21:08 PM

 Number: 2 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:24:39 PM
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- 12 Q. Mr. Avenatti indicated that any agreement would make clear
- 13 that Nike was not buying Franklin's testimony, correct?
- 14 A. I don't recall that.
- 15 Q. AA-3, page 7, paragraph marked (1).
- 16 (Pause)
- 17 A. I don't recall it, sitting here today, but that's the
- 18 memory I have reflected in my notes.
- 19 Q. The phrase "Nike is not buying Gary Franklin's testimony"
- 20 was recorded in your notes eleven months ago, correct?
- 21 A. Yes.
- 22 Q. And that was your best recollection of the words Avenatti
- 23 used on March 19, 2019, correct?
- 24 A. Yes.



 Number: 3 Author: betsys Subject: Highlight Date: 2/9/2020 3:45:06 PM

 Number: 4 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:45:42 PM
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- 6 Q. Your best recollection of what the words Avenatti used was
- 7 "if Nike brings in any other firms," with an "S," correct?
- 8 A. I just described what my best recollection was.
- 9 Q. Are AA-3, page 7, (2).
- 10 (Pause)
- 11 A. My memory is that Avenatti said if Nike hired any other
- 12 firms to conduct the internal investigation, they'd have to pay
- 13 those firms -- they'd have to pay Mr. Avenatti and Mr. Geragos
- 14 twice the amount they paid those firms.
- 15 Q. And then Avenatti made clear, "We are not asking you to pay
- 16 for nothing"?
- 17 MR. RICHENTHAL: Objection.
- 18 THE COURT: Sustained.
- 19 Q. Did Avenatti say to you, Wilson and Leinwand, "We are not
- 20 asking you to pay for nothing"?


Comments from page 7 continued on next page

Mr. Avenatti: I will cut to the chase. My demand is this:

- 1) I want \$1.5 million for Gary [Franklin]. This includes a full release both ways. Any agreement will include language that protects the company and will make clear that Nike is not buying Gary [Franklin]'s testimony. 
- 2) Whatever the internal investigation costs, it costs. There is going to be a big "downstroke" and a "most favored nation's clause." If Nike brings in any other firms, the minimum amount of fees we are paid has to be two times the amount of fees paid to any other firms. We think we are well-situated to handle this investigation. Given my persona, I think the people involved in the investigation will be willing to talk to me. But it's not going to be cheap. We are not asking you to pay for nothing. We will share the findings of the investigation with whoever you want us to share it with. 

Gary [Franklin] will never be able to have another Nike program again.

Mr. Wilson: What would Gary [Franklin] say to complement the documents?

Mr. Avenatti: He would say that he was directed to make multiple payments to players. And that he was threatened that he would lose his program if he refused to make these payments. He would say that he was told how to structure the invoices by Nike, and that he facilitated payments to DeAndre Ayton, Bol Bol, and Brandon McCoy. 

Mr. Wilson: Do you exclusively represent Mr. Franklin.

Mr. Avenatti: Yes.

Mr. Wilson: We are here in good faith, but we are not going to be signing anything tomorrow. I also want to raise that disclosing this information could blow up the lives of the players involved. I have kids, I don't know if you have kids.

Mr. Avenatti: I don't give a shit. These players are not kids, they are adults who made a decision to take the money.

I agree that the system is broken, but the system is the system.

Mr. Wilson: It's not clear that all of the kids knew that they were being paid. Same goes for the college admissions scandal. It's not clear that all of the kids realized that they were being given extra help to get into college.

Mr. Avenatti: That's a fair point. But my biggest consideration with the delay is that you fuck Mark and me.

Mr. Wilson: Mark is pretty, but I don't want to fuck him.

21 A. I can't recall him saying those exact words.

22 Q. AA-3, page 7, (2), two-third of the way through the
23 paragraph.

24 (Pause)

25 A. That's what I wrote in my notes, yes.

 Number: 5 Author: betsys Subject: Highlight Date: 2/9/2020 3:45:47 PM

 Number: 6 Author: betsys Subject: Highlight Date: 2/9/2020 3:15:27 PM

 Number: 7 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:18:30 PM
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12 Q. Do you recall Avenatti further describing what Franklin

13 would say?

14 A. No.

15 Q. Didn't Mr. Avenatti tell you, Wilson, and Leinwand that

16 Gary Franklin would say he was threatened that he would lose

17 his program if he refused to make the payments?

18 A. I don't recall him saying those specific words.

19 Q. AA3, page 7, same paragraph I just directed you to.

20 A. They were in my notes so that is my best memory at the

21 time.

22 Q. Do you recall that Mr. Avenatti told you, Wilson and

23 Leinwand that Franklin would say that he was told how to

24 structure the invoices by Nike?

25 A. I don't recall that sitting here today. No.

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5 Q. Do you recall Avenatti going further and describing that

6 Franklin would say that Franklin had been directed to

7 facilitate payments to Ayton, Bol Bol and McCoy?

8 A. I recall him generally saying that Franklin was directed to

9 make payments to the families of Ayton and others. I don't

10 recall that specific phrase that you used.

Mr. Leinwand: The effect of doing a press release during the NCAA tournament is probably the same as doing a press release before the NCAA tournament. You have to realize this is a public company and nothing moves fast. I don't think that I can move before tomorrow.

Mr. Geragos: Let's have a call at 3:00 p.m.

Mr. Avenatti: There is nothing stopping you from calling the general counsel.

Mr. Leinwand: The general counsel is on vacation in Europe.

Mr. Avenatti: When was the last time you went on a vacation where you were not reachable by phone?

Mr. Leinwand: This is the general counsel of a public company. When I go on vacation I am reachable by phone, but that doesn't mean that she is. I also need to talk to the head of communications and the head of sports marketing. And they are going to say who the fuck is Gary Franklin and Jamal James and Carlton DeBose.



Mr. Avenatti: Why do you need to talk to the head of communications?

Mr. Leinwand: Because this is also a communications issue and the head of communications will need to assess our exposure.

Mr. Geragos: Who is the head of sports marketing?

Mr. Leinwand: John Slusher.

Mr. Geragos: We will text you around 3:30 p.m. We have to go to a meeting at the Eastern District [of New York] for an unrelated matter at 2:00 p.m. that I worked very hard to arrange. And I have a court appearance at 4:00 p.m.

Mr. Avenatti: Where will you be this afternoon? Will you be in Manhattan?

Mr. Wilson: Yes, we will be at our offices in Manhattan.

[The parties shook hands and concluded the meeting. The meeting ended at approximately 1:30 p.m. EST.]

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Page: 8

 Number: 1 Author: betsys Subject: Highlight Date: 2/9/2020 3:18:54 PM

 Number: 2 Author: betsys Subject: Sticky Note Date: 2/9/2020 3:19:44 PM
PAGE 1505

- 13 Q. I want to clarify when Mr. Leinwand said to the effect that
- 14 head of communications and head of sports marketing are going
- 15 to say who the F is Gary Franklin, Jamal James and Carlton
- 16 DeBose, he actually used the four-letter word, not the way I
- 17 described it, correct?
- 18 A. He said something to that effect. I can't recall.
- 19 Q. AA3, page 8, middle of the page. He actually used the
- 20 explicative, the F word, right?
- 21 A. I can't recall whether it was fuck or shit or -- I can't
- 22 recall exactly but my notes capture that. That was my memory
- 23 at the time.
- 24 Q. Your notes capture the F word, all four letters, correct?
- 25 A. Yes.